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7 *E-FILED 11/16/2007*

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NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

11 ROBERT SCHMIDT and THOMAS WALSH, No. C04-01026 RMW (HRL)

12 Plaintiffs,

13 v.

**ORDER ON DEFENDANT LEVI
STRAUSS & CO.'S MOTION FOR
CLARIFICATION**

14 LEVI STRAUSS & CO., LAURA LIANG and
DOES 1-50,

[Docket No. 177]

15 Defendants.

16 RELATED COUNTER-ACTION

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Defendant Levi Strauss & Co. ("LS&Co.") moves for clarification of this court's
September 10, 2007 "Order Granting in Part and Denying in Part Plaintiff's Motion to Compel
Documents and a Privilege Log." Part of that underlying discovery dispute concerned
documents that plaintiff Schmidt had in his possession when he was fired by LS&Co. Plaintiffs
returned the documents in question to LS&Co. and then sought to have LS&Co. produce them
in discovery. LS&Co. produced some, but not all of the documents; and, this court
subsequently granted plaintiff's motion to compel. (See September 10, 2007 Order, Docket No.
176 at pp. 4-5).

The parties now dispute whether LS&Co. is obliged to produce all previously withheld
documents or only a subset of them. Assuming LS&Co. is obliged to produce all documents,

United States District Court

For the Northern District of California

1 the parties also disagree whether it may now prepare a privilege log for any of the documents it
2 claims are privileged. This court took the matter under submission without oral argument.
3 Upon consideration of the moving and responding papers,¹ the court orders as follows:

4 The September 10, 2007 order was meant to require LS&Co. to produce all previously
5 withheld documents, not just a subset of them. To the extent LS&Co. seems to be seeking
6 reconsideration of that ruling, it has not presented any new material facts or law. LS&Co. shall
7 produce all of the withheld documents **no later than November 30, 2007**.

8 As for any claimed privileged documents – to be sure, LS&Co. asserted in its underlying
9 papers that some documents were privileged. But it made no attempt to substantiate its
10 assertion – except, perhaps, for defense counsel’s suggestion at oral argument that the
11 documents were privileged because they were created or received by Schmidt, who was an
12 attorney in its tax department during his employment. Based on the record presented, the court
13 expressed doubt as to LS&Co.’s assertions as to any privilege or waiver. Nevertheless, LS&Co.
14 will be permitted an opportunity to now prepare a privilege log, so that any asserted privilege or
15 protection can properly be assessed. *See Fed.R.Civ.P. 26(b)(5)*. LS&Co.’s privilege log shall
16 be produced **no later than November 30, 2007**.

17 IT IS SO ORDERED.

18 Dated: November 16, 2007

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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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26 ¹ Plaintiffs failed to timely file their opposition brief and offered no explanation
27 for the delay. This is not the first time they have done so; and, they have previously been
28 admonished to make timely filings. (*See* Docket No. 150, n. 1). This court has accepted and
considered plaintiffs’ late-filed opposition because it does not find that there was undue
prejudice to defendants by the delay. However, it takes a dim view of plaintiffs’ repeated
and casual disregard of filing deadlines. In the future, plaintiffs shall be required to show
good cause and lack of prejudice before their belated filings will be considered.

1 **5:04-cv-1026 Notice will be electronically mailed to:**
2 Joseph Heathcliff Ainley JAinley@popelka.com, gsimmons@popelka.com
3 Franklin Edward Bondonno fbondonno@popelka.com, dlee@popelka.com
4 Adi Herzberg aherzberg@gibsondunn.com, bhonniball@gibsondunn.com,
 mjanky@gibsondunn.com
5 Philip Edward Kay phil@nosexualharassment.com
6 Rebecca Justice Lazarus rjustice@gibsondunn.com, rmcbain@gibsondunn.com
7 Jeffrey Alan Leon jleon@leonandleon.com, leonandleon@leonandleon.com
8 Jeffry William Lochner jlochner@popelka.com, jlochner@verizon.net,
 kanderson@popelka.com
10 Sheila Marie Pierce sheila.pierce@bingham.com
11 Gabriel Neil Rubin grubin@stblaw.com, hlelaind@stblaw.com, jlaw@stblaw.com
12 Erin E. Schneider eschneider@gibsondunn.com
13 Austin Van Schwing aschwing@gibsondunn.com
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 not registered for e-filing under the court's CM/ECF program.**
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